**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA**

CWP No.152 of 2005

Date of decision 27.8.2007

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Smt.Sushila Kumari Petitioner

Vs.

The Executive Engineer, I&PH
& another. Respondents

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Coram:

The Hon'ble Mr.Justice Rajiv Sharma,J.

Whether approved for reporting?[1] No.

For the Petitioner: Mr. Anand Sharma, Advocate.

For the Respondents : Mr.M.S.Chandel, Advocate General, with Mr.M.A.Khan and Ms.Meenakshi Sharma, Deputy Advocate Generals.

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**Rajiv Sharma, J.**

A challenge has been laid by way of this petition to the award passed by the H.P. Labour Court, Shimla on 18.5.2004 in Reference No.119 of 2000.

The brief facts necessary for the adjudication of this petition are that the State Government had made the following reference to the H.P. Labour Court, Shimla:

> "1. Whether termination of services of Kumari Sushila, ex-daily wages beldar by the Executive Engineer, I&PH Division, Sundernagar, District Mandi,H.P. w.e.f. 5/90 without any notice, charge sheet, enquiry and without compliance of Section 25 (F) of the Industrial Disputes Act, 1947 and retaining junior to her in service , is legal and justified. If not, to what relief of service benefits and amount of compensation, Kumari Sushila is entitled?
> 2. Whether Kumari Sushila has abandoned the job on her own, as alleged. If not, to what effect?"

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[1] Whether reporter of local papers are allowed to see the judgment ? No.

In sequel to the reference made by the State Government the petitioner had filed her statement of claim before the Labour Court. The principal stand of the petitioner-workman was that she had put in 7 years service with the respondents as Clerk on daily wage basis with effect from October, 1983 till May, 1990, but was retrenched without following the mandatory provisions of Industrial Disputes Act, 1947. The employer had filed reply to the statement of claim and had primarily contended in the reply that the petitioner herself had left the job. The Labour Court vide Award dated 18.5.2004 answered the reference in negative.

Mr.Anand Sharma, learned counsel appearing for the petitioner had strenuously argued that the Labour Court had not correctly appreciated the evidence led before it and thus the award is not sustainable in the eyes of law. The learned Advocate General had supported the award dated 18.5.2004.

I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

The petitioner, hereinafter referred to as the workman for convenience sake, was appointed on daily wage basis as a Clerk with effect from October, 1983 till May, 1990. The workman had appeared as PW-1 and deposed that she joined the respondents department on daily wage basis in the month of October, 1983. She was deputed on the diary and dispatch seat and she used to be deployed to work as Hindi typist and Smt.Mathura Devi used to be English typist in the Circle office. She had categorically stated that the Department made fresh recruitment by engaging Smt.Shila Devi in I&PH Sub Division at Kanaid who was subsequently transferred to I&PH Division at Mandi but she was not called back to join her duties. Smt.Mathura Devi who had appeared as PW-2 had testified that after the services of the workman were dispensed with in May, 1990, Smt. Shila Devi had joined I & P.H. Sub Division, Kanaid on daily wages and presently she is working in I&PH Sub Division, Mandi.

Sh.M.L.Sharma, Assistant Engineer had appeared as RW-1 and had stated in his examination-in-chief that it was not a case of retrenchment but the workman had left the job of her own and she had not completed 240 days preceding her alleged retrenchment. He has admitted that the petitioner was not issued any notice to resume her duties. In view of the statements of PW-1 and PW-2, it is evident that after the services of the petitioner were terminated, Smt.Shila Devi was engaged in I&PH Sub Division Kanaid who was subsequently transferred to I&PH Sub Division, Mandi. It was incumbent upon the employer to issue notice to the petitioner to join her duties before engaging Smt.Shila Devi. This admittedly has not been done by the employer.

It is settled law by now that the workman need not complete 240 days in view of the definite pronouncement of law by the Hon'ble Supreme Court in ***Central Bank of India Versus S.Satyam and others,*** (1996) 5 SCC 419 wherein it has been held that it is not necessary for the workman to complete 240 days in one year to get benefit of section 25 (G) and (H) of the Industrial Disputes Act. Their Lordships have held as under:

> "The plain language of Section 25-H speaks only of re-employment of "retrenched workmen". The ordinary meaning of the expression "retrenched workmen" must relate to the wide meaning of 'retrenchment' given in section 2 (oo). Section 25-F also uses the word 'retrenchment' but qualifies it by use of the further words "workman…who has been in continuous service for not less than one year". Thus, section 25-F does not restrict the meaning of retrenchment but qualifies the category of retrenched workmen covered therein by use of the further words "workman…who has been in continuous service for not less than one year:. It is clear that Section 25-F applies to the retrenchment of a workman who has been in continuous service for not less than one year and not to any workman who has been in continuous service for less than one year; and it does not restrict or curtail the meaning of retrenchment merely because the provision therein is made only for the retrenchment of a workman who has been in continuous service for not less than one year. Chapter V-A deals with all

retrenchments while Section 25-F is confined only to the mode of retrenchment of workmen in continuous service for not less than one year. Section 25-G prescribes the principle for retrenchment and applies ordinarily the principle of “last come first go” which is not confined only to workmen who have been in continuous service for not less than one year, covered by Section 25-F.

The next provision in Section 25-H which is couched in wide language and is capable of application to all retrenched workmen, not merely those covered by Section 25-F. It does not require curtailment of the ordinary meaning of the word ‘retrenchment’ used therein. The provision for re-employment of retrenched workmen merely gives preference to a retrenched workman in the matter of re-employment over other persons. It is enacted for the benefit of the retrenched workmen and there is no reason to restrict its ordinary meaning which promotes the object of the enactment without causing any prejudice to a better placed retrenched workman.

Chapter V-A providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25-F applies but for all cases of retrenchment and, therefore, there is no reason to restrict application of Section 25-H therein only to one category of retrenched workmen. We are, therefore, unable to accept the contention of Shri Pai that a restricted meaning should be given to the word ‘retrenchment’ in Section 25-H. This contention is, therefore, rejected.”

The Labour Court had failed to take into consideration that there was violation of section 25-H of the Industrial Disputes Act, 1947 by the employer by not issuing notice to the petitioner to join her duties before engaging Smt.Shila Devi. The Labour Court came to wrong conclusion that it was necessary for the workman to put a question to RW-1 whether fresh hand was engaged or not. There was sufficient material on record to arrive at a finding that Smt.Shila Devi was engaged after effecting retrenchment of the petitioner.

Now the Court has to consider whether the dispute raised by the workman was stale and if yes whether the petitioner will be entitled to any relief or not, If her retrenchment is declared illegal ultimately. The

workman was retrenched in May, 1990 and reference had been made in the year 2000. The Apex Court has held in **State of Punjab v. Anil Kumar**, JT 2007(7) SC 559 that there is inordinate delay in raising the dispute the workman cannot be granted any back wages but his/her reinstatement can be ordered. Their Lordships have held as under:

> "In support of the appeal, learned counsel for the appellant submitted that the civil suit filed, was thoroughly misconceived. In view of section 2(oo)(bb) of the Act on expiry of the fixed period for which engagement was done, there was no scope for any direction for reinstatement. The demand for reference under the Act was made after 13 years.
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> In view of the factual position as highlighted above, we do not find any infirmity in the order passed by the Labour Court as affirmed by the High Court so far as entitlement of the respondent-workman to be reinstated.
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> At the same time the fact that there was belated approach cannot be lost sight of. Admittedly, there was belated approach and the Labour Court was moved after 13 years.
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> In the peculiar circumstances of the case while upholding the direction for reinstatement, we direct that the directions given by the Labour Court as affirmed by the High Court regarding payment of back wages need to be modified.
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> In the aforesaid background, the direction for payment of back wages stands set aside while the direction for reinstatement is maintained."

The upshot of the above discussion is that the Labour Court has not taken into consideration the violation of section 25-H of the Industrial Disputes Act, 1947 in its right perspective. Accordingly the writ petition is allowed and the case is sent back to the Labour Court at Dharamshala with the direction to decide the matter afresh in view of the observations made here in above, more particularly with regard to the engagement of Smt.Shila Devi after the retrenchment of the petitioner. The Labour Court will also decide whether the petitioner is to be reinstated as typist or Beldar in view of the evidence already placed on record. The Labour Court

Dharamshala is directed to decide the matter within a period of three months from today. The Labour Court will decide the question of delay in raising the dispute at the time of granting the relief in view of the law laid down by the Hon'ble Supreme Court in case cited here in above.

The record summoned be sent back to the Labour Court Dharamshala.

August 27, 2007(g) **( Rajiv Sharma ), J.**